Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128

REPLY COMMENTS OF AMERITECH

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SUMMARY

The compensation plan proposed in the NPRM would provide a per-call charge only for dial-around calls, and would leave "0+" compensation solely as a matter to be negotiated between the carrier and the pay telephone owner. This would not comply with Section 276, which requires a "per call" plan of compensation for "each and every completed intrastate and interstate call." Moreover, it would not fairly compensate the BOCs for their payphones, since they have never had any ability to negotiate with IXCs before the present rulemaking. Thus, the appropriate plan would be one in which the Commission establishes a standard per-call amount to apply to all calls, both "0+" and dial-around, subject to the ability of the payphone owner and the IXC to pay a different amount for "0+" if it is mutually agreed to. This type of plan is supported by such diverse parties as the BOC Payphone Coalition and the American Public Communications Council. Accordingly the Commission should abandon its original tentative conclusion on "0+".

Today the public interest is not well served by Judge Greene's 1988 rule that requires the BOCs to refrain from selecting or recommending interexchange carriers at BOC payphones, and the rule

should be abolished in accordance with the Congressional mandate in Section 276 of the Act, which directs the Commission to grant to BOCs the same ability that other payphone owners have to participate in the selection of IXCs at their payphones, unless the Commission finds it is not in the public interest. The various comments on this point do not succeed in establishing that such IXC selection would be contrary to the public interest. Certainly, the desire of premises owners to continue to receive commissions directly from the IXCs is not vital to the public interest; indeed, the objective of the original rule when it was established in 1988 was not to provide a benefit to premises owners. In addition, the Commission should reject the comments of those who say that BOC participation in IXC selection at payphones should be delayed until after BOCs are themselves authorized to provide in-region interLATA services under Section 271 of the Act. The fact that Congress deliberately put Section 271 and 276 on separate timelines clearly indicates that the subjects of payphone carrier selection and in-region interLATA service were meant to be considered independently of each other

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I. Per-Call Compensation Plan

A. *Per-Call Compensation for "0+", Subject to the Parties' Ability To Negotiate Individually*

The central feature of Section 276 of the Telecommunications Act of 1996 is its mandate to the Commission to prescribe, within nine months, regulations to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." In Paragraph 16 of the Notice of Proposed Rulemaking in this docket, the Commission has stated a tentative conclusion that although per-call compensation should be established for dial-around

calls, and despite the specificity of the statutory language, compensation for "0+" calls should be the subject of negotiations between the IXC and the pay telephone owner. This was based on the reasoning that the Commission "need not prescribe per-call compensation for 0+ calls because competition in this area ensures 'fair' compensation for PSPs."

In its opening Comments, Ameritech[1] disputed the Commission's tentative conclusion. Ameritech pointed out, first of all, that the omission of "0+" calls would not comply with Section 276, which requires the Commission to establish a "per call" plan under which compensation is paid on "each and every completed intrastate and interstate call."

Second, the Commission's reliance exclusively upon negotiations for "0+" calls assumes the BOCs will at last be granted the ability to participate in the selection of interLATA carriers at their pay telephones, since otherwise the BOCs will have nothing to negotiate with. In fact, the Commission should not even consider the prospect of

[1] Ameritech comprises Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and various affiliates.

leaving "0+" calls to negotiation between the IXC and the pay telephone owner unless the BOCs are granted relief in this area. Otherwise, the rationale given for the tentative conclusion — the theory that "competition in this area ensures 'fair' compensation for PSPs" — will be wholly invalid, because the majority of the pay telephones in the United States would *not* be receiving such "fair" compensation.

Unfortunately, many of the commenting parties take positions that seem to ignore this fundamental interdependence between the form of compensation, on the one hand, and the BOCs' right to participate in IXC selection, on the other. AT&T, for example, opposes granting any BOC the ability to participate in IXC selection, at least until it has obtained its own in-region interLATA authority under Section 271;[2] but it also asserts that on "0+" calls, "the fairness of the compensation can be presumed from the existence of the consensual arrangement between the carrier and the payphone provider."[3] Reading this, one might think that even AT&T would have to concede that the *absence* of any such consensual arrangement means that the

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[2] AT&T at 23–27.

[3] *Id.* at 4.

payphone provider is *not* receiving fair compensation for "0+" traffic; but AT&T still stubbornly opposes the BOC relief that would make such agreements between BOCs and IXCs a realistic possibility, revealing — as was always suspected anyway — that AT&T's dedication to the idea of "fair" compensation sinks to a low ebb whenever it is AT&T who will be paying. This type of glaring inconsistency, however, cannot be allowed to prevail. If, when this docket is over, the BOCs still do not have the ability to participate with the premises owner in the negotiations with the IXC, the Commission should not consider negotiated compensation as eligible for *any aspect* of the Section 276 compensation plan, and by no means should negotiation be adopted as the *sole* available method of compensation as was proposed in the NPRM.

Moreover, even if the BOCs *are* granted the right to participate in the selection of the IXC on a going-forward basis, they will still be at a considerable negotiating disadvantage starting from Ground Zero on their *existing* pay telephones. In many cases, IXCs have entered into long-term contracts to pay commissions direct to premises owners, and even where such contracts do not exist, the BOCs will still face an

arduous task in opening up negotiations with IXCs for pay telephones that are already in service. Not surprisingly, the coalition of six BOCs[4] foresees the same negotiating difficulties as does Ameritech. "Once RBOC-affiliated PSPs can negotiate with OSPs," the RBOC Coalition observes, "they too will be able to negotiate compensation . . ."[5]; but it hastens to add that "grandfathered" long-term contracts at BOC pay telephones, some of which are for ten years or more, will bar such negotiations as a practical matter. Accordingly the RBOC Coalition urges that a special rule should apply to the BOCs that would require IXCs to pay them a per-call compensation amount to be fixed by the Commission.[6]

In short, there can be no question but that the rule tentatively proposed by the Commission, in which a negotiated amount would be the only available compensation option on "0+" calls, would blatantly favor the non-BOC pay telephone owners, who have already had more

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[4] Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, and U S WEST [hereinafter referred to as the RBOC Coalition].

[5] RBOC Coalition at 5.

[6] Later, on p. 12 of the Coalition's Comments, it becomes clear that this payment for "0+" traffic at BOC pay telephones is meant to be a "default" amount that applies *only* in the absence of an agreement, which makes the Coalition's position essentially identical to that of Ameritech.

than a decade to negotiate their "0+" agreements with IXCs; in contrast the BOCs, although they would be required to end abruptly their recovery of pay telephone costs from general access charges, would face a sudden and undeserved revenue shortfall as they scrambled to catch up in the negotiating process.[7]

However, there is no need for the Commission to adopt such an arbitrary compensation rule when Section 276 would also permit a plan with a fixed charge for *all* calls, whether "0+" or dial-around, subject to the right of the carrier and the pay telephone owner to agree on some *different* amount for "0+" whenever they choose. This rule would have no adverse effect on the existing arrangements of the non-BOC pay telephone providers, nor on any future arrangements they might wish to negotiate;[8] on the other hand, it would provide the BOCs

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[7] It is therefore ironic, and provides a further reason to reverse the NPRM's tentative conclusion for "0+" traffic, that the non-BOC pay telephone providers, at least insofar as they are represented by the American Public Communications Council, on pp. 19–21 of its Comments, also oppose the idea of a negotiated rate as the sole means of compensation for "0+" calls, urging instead that the Commission should "determine a fair level of compensation and mandate that payphone providers be compensated *at least* that amount for all calls" [emphasis added]. This is, then, virtually the same solution that is proposed by Ameritech and by the RBOC Coalition.

[8] In fact, those providers might on occasion derive some benefit from a rule establishing a fixed per-call amount for "0+", either in cases where there is no existing agreement or in cases where the fixed amount would provide a definite minimum amount to serve as a starting point in negotiations.

with immediate "0+" and dial-around compensation to offset the loss of revenues resulting from the reduction of the carrier common line charge. Ameritech submits that this is the only rule that can bridge the historical gap that has existed until now between BOC pay telephones and other pay telephones and provide fair compensation going forward into the future for the pay telephones of all providers alike.

B. Guidelines for State Regulation of Local Coin Rates

In its initial Comments, Ameritech supported the view that compensation for local coin calls should continue to be regulated by the states in the first instance, subject to such federal guidelines as might be necessary to ensure that subsidies are eliminated as required by Section 276. It is apparent that the majority of commenters subscribe to that same position. However, Ameritech also supports the view expressed in the comments of BellSouth and Southwestern Bell, who maintain that local coin calls should be totally deregulated. Moreover, the comments of the Iowa Public Service Commission show that such deregulation can be accomplished without encountering extreme or unforeseeable consequences. In order to prevent subsidy from other affiliated services, it is only necessary that a minimum payphone rate be established. Accordingly, the Commission should promulgate

guidelines for the states that are only concerned with the prevention of subsidy, and should mandate the removal of any state-imposed maximum rates for local pay telephone calls.

C. Compensation for Directory Assistance

In its initial Comments, Ameritech, along with many commenters, proposed that compensation be paid on directory assistance calls just as well as on any other type of pay telephone call. Although this proposal has been opposed by many state regulatory commissions, the Commission should find that the legislation's command to provide compensation for each and every call requires compensation for directory assistance. The evident purpose of Section 276 is to seek to put an end to subsidies of all kinds, and any kind of "free" service is being subsidized from someplace, either from the LEC network operations that provide directory assistance, or by the other users of a pay telephone who do not require directory assistance. Accordingly the compensation plan should include directory assistance

D. Inmate Calling Services

The Inmate Calling Services Providers Coalition has proposed that a special compensation rate for inmate calling be established that would be distinct from the rates that would apply to other payphone

calls. Ameritech agrees that this is a distinct and specialized industry, and accordingly Ameritech does not oppose the establishment of an individual rate.[9]

E. Tracking of Compensation

In its opening Comments, Ameritech stated that it has been doing all the measuring and recording that is necessary to make Ameritech's IXC pay telephone use fee tariff effective, billing the IXC for all calls made from Ameritech's pay telephones whether dialed "1+", "0+", with an access code, or using "800". Ameritech stated that it was able and willing to provide call "tracking" services for all pay telephones in Ameritech's territory, and that accordingly there was no need for pay telephone owners to rely on self-reporting by IXCs for the compensation that the pay telephone owners are to be paid under Section 276.

The Competitive Telecommunications Association, which also opposed the Ameritech tariff on the same grounds, asserts on pp. 12–13 of its Comments that Ameritech's billing is inaccurate because it is

[9] However, Ameritech opposes the Coalition's contention that special arm's length arrangements are necessary to prevent the BOC pay telephone operations from having an advantage in regard to the collection of bad debts on calls originated from prison payphones. The Computer III separation requirements will be adequate to eliminate problems in this regard.

sometimes necessary to use a "time-out" to determine whether or not a particular call has been actually completed to its destination. These complaints lack substance. Putting aside the question whether the statute actually forbids the billing of compensation for a call attempt that is not actually answered at the destination,[10] Ameritech has previously explained that the need to impose a "time-out" approximation of a completed call arises from the fact that although IXCs virtually always receive an answer supervision signal from the destination end office indicating that the called party has answered and that the call is completed, not all IXCs return that answer supervision signal to the LEC at the originating end office. Thus if the Commission desires to achieve greater precision in the tracking of which calls are "completed," it must make sure that all IXCs process answer supervision properly.

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[10] Section 276 only says that every completed call must be compensated, without adding that incomplete call attempts must *not* be compensated. The emphasis on completed calls results from the fact that Congress was well aware that various types of completed calls were not receiving any compensation before the legislation, rather than reflecting an intent to mandate that the Commission must allow no compensation for incomplete calls. The pay telephone is equally in use during an incomplete call or a completed call, especially under a plan that pays per call rather than per minute.

II. Reclassification of BOC Pay Telephones as CPE

A. Asset Transfer Issues

Many commenters raised questions of the valuations of assets. Among the most radical of these views were those of the Georgia Public Communications Association. Georgia PCA argues that the payphone assets to be transferred must include long-term space rental contracts and that the valuation of both should be established by means of an auction. Alternatively, Georgia PCA comments that the Commission should prescribe a valuation standard other than net book value, noting that Section 276 of the Act gives the Commission the freedom to do so (Georgia PCA Comments at 15-17).

Georgia PCA's proposals are neither necessary nor appropriate. First, Section 276(b)(1)(C) requires that, at a minimum, the Commission prescribe nonstructural safeguards equal to the Computer Inquiry III safeguards adopted in CC Docket 90-623. The Computer III accounting safeguard governing the transfer of assets is Section 64.902 and 32.27, Transactions with Affiliates. The Commission has already concluded that these valuation standards are consistent with Democratic Central Committee v. Washington Metropolitan Area Transit Commission (See February 6, 1987 Joint Cost Order at ¶ 297; October 16, 1987, Reconsideration Order at ¶¶ 109-11). While Ameritech

maintains these valuation standards are no longer necessary and the Commission should simply use net book value, at a minimum they should be left as they are because they fully compensate the regulated carrier for the value of assets sold since the requirement is to transfer assets out of regulation at the higher of estimated fair market value or net book cost.

Second, the use of an auction would be tantamount to an actual divestiture and would clearly violate the command of Section 276 that the separation of BOC payphones must be "non-structural."

Third, there is no need to include rental contracts in the assets to be transferred. Either the rental contract will be an affiliate transaction between the payphone affiliate and the regulated carrier or the rental expenses will be subject to the Commission's cost allocation rules of Section 64.901 if provided as a nonstructural payphone activity.

B. Unbundling of Coin Lines

In its opening comments, Ameritech stated that it had already filed a tariff in Illinois to provide a coin telephone line to nonaffiliated payphone providers, and that it intended to file such tariffs in its remaining four states. Many parties in their comments have

contended that the important feature of answer supervision should be "unbundled" from these coin lines. However, it is not necessary to "unbundle" answer supervision from anything, because answer supervision is already offered by Ameritech under tariff (or is offered publicly on a non-tariffed basis) to anyone who desires it, not just to the operators of pay telephones.

C. CEI Plans

Ameritech supports the views stated by the RBOC Coalition on pp. 33–40 of its comments that the filing of CEI plans is unnecessary. If, however, the Commission decides that CEI plans must be filed, the Commission should clarify that the CEI plans need only describe and cover the network functionality and features that are used by the payphone itself. As intelligence or functionality is added to the CPE, for competitive reasons, it should be clear that the CEI plan would not require re-filling and review as long as the functionality delivered by the network remained unchanged.

III. BOC Selection of InterLATA Carriers

Section 276(b)(1)(D) of the Act directs the Commission to allow BOCs to participate in the selection of the presubscribed intraLATA carrier at BOC pay telephones "unless the Commission determines

that it is not in the public interest." In its opening Comments, Ameritech showed that the statutory standard has been met, since the public interest is currently being harmed by the fact that premises owners who desire the convenience of "one-stop shopping" are denied the benefit of receiving such services from BOCs in regard to BOC payphones. Ameritech also showed that in the absence of any influence or restraint from the pay telephone owner, the premises owners often select a carrier based solely on commission payments they may receive from the carrier, regardless of the interests of the calling public; this is of course also harmful to the public interest.

Many parties filing comments support the ability of the BOC to participate in the selection of carriers at BOC telephones. On the other hand, several airports, truckstops, and other location providers urge the Commission to withhold that ability from the BOCs. These premises owner comments are based almost exclusively on the premises owner's desire to retain an existing stream of commission payments from interexchange carriers

Such comments should not be given credence. First of all, they exaggerate the issue. Ameritech is not, after all, seeking to dictate the choice of carrier absolutely in all cases, but is only seeking relief from a

rule that presently restrains it from making recommendations as to what carrier ought to be selected at Ameritech's own pay telephones.

Second, the efforts of the premises owners to preserve the revenue streams they receive under the *status quo* has nothing whatever to do with the public interest test that Section 276 prescribes as the standard to govern this question. Even at the time of its inception, the rule requiring IXC selection by the premises owner was not intended to be for the benefit of the premises owners themselves, or to establish a new source of payments to be made to them. Instead, the rule was supposed to be for the benefit of interexchange carriers, who allegedly were in need of protection from the potential for discrimination on the part of the BOCs. Any windfall for the premises owner was regarded not as a good thing, but a necessary evil. In fact, the judge foresaw that "in their choice of an interexchange carrier, many premises owners are likely to subordinate quality of service and price — that are of paramount importance to the end users as well as to the purposes of the decree — to the amount of commission they may receive from particular interexchange carriers."[11] This, he observed, would be "incon-

[11] United States v. Western Elec. Co., 698 F. Supp. 348, 367 (D.D.C. 1988).

sistent with the fundamental purposes of the decree."[12] Nevertheless, he ordered premises owner carrier selection in spite of these obvious drawbacks.

Thus in 1988, Judge Greene allowed the narrow interest of competition to prevail over the larger public interest issue of service to the pay telephone user. Now, however, in Section 276, Congress has determined to revisit the issue of BOC carrier selection, and has directed the Commission to apply the public interest standard that Judge Greene chose to reject. Accordingly, the fact that individual premises owners might suffer the loss of a revenue stream is not an adequate showing that selection of carriers by the BOCs would not be in the public interest.

Moreover, the comments of the various premises owners say nothing about what is the central issue posed by Section 276, which is why there should be any *difference* between the BOC pay telephones and the non-BOC pay telephones in regard to their respective owners' right to participate in the selection of the carrier. The premises owners have no good answers to these questions. Obviously, premises

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[12] *Id.*

owners do not automatically lose the economic value of the interLATA carrier's commission when a non-BOC pay telephone is installed on their premises, even though the non-BOC provider is free to negotiate with the carrier; if it were otherwise, no premises owner would ever select a non-BOC pay telephone.[13] Accordingly, there is reason why the present distinction between what the BOCs and non-BOCs can do should continue.

Other parties opposing the ability of the BOCs to participate in the selection of carriers at their pay telephones include the most prominent interexchange carriers. The most basic of these objections is stated by AT&T on page 24 of its comments, where it says that to allow the BOCs to participate in carrier selection "enables the BOCs effectively to enter the interLATA market through acquiring an economic interest in . . . the IXCs they designate to serve those payphones." AT&T then goes on to say that the Commission should delay deciding this question until after some BOC is permitted to enter the in-region interLATA market under Section 271 of the Act.

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[13] The explanation, of course, is that the same or equivalent commissions are received from the payphone owner instead of directly from the interLATA carrier.

These contentions should be rejected. First, it strains the meaning of the English language to say that the mere participation by the BOCs in the premises owner's selection of another entity to be the inter-LATA carrier at a pay telephone is the same as the BOC actually "entering" the interLATA market. Such a contention is especially absurd when that other entity is going to operate independently, provide all the interLATA services, and receive all the interLATA revenue direct from pay telephone end users, which of course would be the case here.

Moreover, the Telecommunications Act offers no support for the idea that BOC participation in carrier selection must await the granting of in-region relief under Section 271 Congress has expressly directed that the question of whether the BOCs have the same right of carrier selection as their non-BOC pay telephone rivals is a question to be taken up in the same rulemaking as the other primary pay telephone issues under Section 276, and that rulemaking is to be concluded within nine months after enactment of the Telecommunications Act. If Congress had meant for BOC carrier selection among non-affiliated carriers to have to wait until after a proceeding under Section 271, it surely could have said so. Instead, however, it deliberately put Section 271 and Section 276 on different timelines, and there is no basis

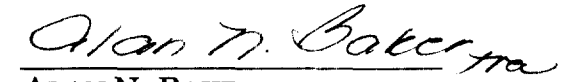
for AT&T's attempts to disturb that result. The BOCs should be authorized to participate in carrier selection at BOC pay telephones immediately upon the conclusion of the instant rulemaking.

IV. Conclusion

Nothing in the various comments dispels the force of Ameritech's original argument that in applying Section 276, the Commission should establish a per-call rate for both "0+" and dial-around calls, subject to the right of the carrier and the pay telephone owner to

negotiate a different rate for "0+" calls. Nor do anyone's comments show any good reason why Bell operating companies should not be allowed to participate in the selection of interLATA carriers at BOC pay telephones.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that on this 15th day of July, 1996, the foregoing Reply Comments of Ameritech were served by depositing copies thereof in the U.S. Mail at Chicago, Illinois, addressed to each person shown on the following list.

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